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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES DAVIS YOUNG,

Defendant and Appellant.

A144481

(Contra Costa County  
Super. Ct. No. 51309251)

Defendant Charles Young was convicted by jury of residential burglary (Pen. Code, §§ 459, 460, subd. (a)),<sup>1</sup> assault with a deadly weapon (a cane) (§ 245, subd. (a)(1)) and false imprisonment (§ 237, subd. (a)), as well as an enhancement for personal infliction of great bodily injury (§ 12022.7, subd. (a)). The trial court found prior conviction allegations to be true and sentenced Young to a prison term of 45 years to life.

On appeal, Young argues (1) materials sealed by the trial court include information essential to protecting his confrontation rights, (2) the court erred by failing to give a sua sponte unanimity instruction in connection with the burglary charge, and (3) the court should have stayed the sentence on the assault charge under section 654. The Attorney General disputes these claims of error but argues resentencing is required for other reasons. We reject Young's challenges to his convictions, but we agree with his contention as to the applicability of section 654. We also agree with the Attorney

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

General that the sentence imposed by the court (as currently configured) is unauthorized and that resentencing therefore is necessary.

## **I. BACKGROUND**

### **A. The Charges Against Young**

An amended information charged Young with (1) first degree residential burglary (Count 1) (§§ 459, 460, subd. (a)), (2) assault with a deadly weapon (Count 2) (§ 245, subd. (a)(1)), (3) second-degree robbery (§§ 211, 212.5, subd. (c)), and (4) kidnapping (§ 207, subd. (a)). As to each count, the information alleged Young personally inflicted great bodily injury on the victim (§ 12022.7, subd. (a)). The information alleged Young had sustained multiple prior convictions. The information charged a codefendant, Ksandra Thomas, with the same burglary, assault and kidnapping charges that were brought against Young.

### **B. The Evidence Presented at Trial**

Binti Pryor, her boyfriend Aubrey, and her elderly and infirm mother, Bernice Hendon, lived together in Richmond. On April 14, 2013, just after Aubrey left for the day, Young entered the house without permission, asking to see Pryor. Hendon explained her daughter was still asleep, and Young went upstairs to Pryor's bedroom to wake her, taking the cane he used to walk.

Hendon heard "hollering" and a "cracking" sound from upstairs. Hendon got out of bed and went upstairs. She saw Young beating her daughter with the cane and his fists. Hendon tried to stop the assault, but Young elbowed her and knocked her down. Pryor was face down on the bed while Young beat her. Young pulled Pryor off the bed and toward the stairs. Young and Pryor fell down the stairs together.

At the bottom of the stairs, codefendant Ksandra Thomas and another woman, who had a baseball bat, joined in the assault on Pryor. The three assailants continued to hit Pryor and dragged her out of the house. Hendon, who used an oxygen tank, could go no further than the porch. Young came back into the house briefly, went upstairs, returned to the street with Pryor's phone and took it to her.

Pryor testified she had sold an “EBT card” (an electronic benefits card with food stamps on it) to Thomas’s niece, on behalf of a third party who preferred cash to food stamp benefits. The \$200 EBT card was sold for \$90, but apparently the PIN number provided with the card did not work.

Outside the house, Pryor asked for her phone to call Aubrey so he could check the PIN number with the seller and get it reset. Young went into the house, got the phone and gave it to Pryor. Pryor called Aubrey and told him what had happened so he could call the police. Young punched Pryor again and took her phone. Young, Thomas and the other female assailant left together.

Pryor’s injuries included a facial fracture, a broken arm, swelling around her eye, and multiple bruises. Pryor’s dentures were broken while they were in her mouth.

Young’s codefendant, Thomas, testified she did not intend for the incident to become violent, was minimally involved in the beating, and only hit Pryor after Pryor hit her. Thomas testified that Young is her cousin, and that the other woman present, Ratheda Hale, is her boyfriend’s niece.

Young testified he went to Pryor’s home because he wanted Pryor to return the money to Thomas and Hale. Young got physical with Pryor when she was disrespectful. He was struggling with her when they both fell down the stairs together. After everyone was outside, Young went back into the house to get Pryor’s phone; when he came back outside, he gave it to her. He acknowledged getting physical with her again before he left. He denied taking or keeping her phone.

### **C. The Verdict and Sentence**

The jury convicted Young of first degree burglary and assault with a deadly weapon, acquitted him of robbery, and found him guilty of the lesser included offense of false imprisonment on the final count. As to each count of conviction, the jury found true the allegation that Young personally inflicted great bodily injury on the victim. The jury convicted Thomas of assault and attempted kidnapping, and found she personally inflicted great bodily injury. As to Young, the court denied a motion for new trial and found true the prior conviction allegations.

The court sentenced Young to 45 years to life in prison. This total consisted of an indeterminate term of 25 years to life, consecutive to a determinate term of 20 years. The 20-year determinate term included the upper term of six years for burglary (§ 461, subd. (a)), one-third of the three-year midterm for assault with a deadly weapon (§ 245, subd. (a)(1)), a three-year great bodily injury enhancement (§ 12022.7, subd. (a)), and two five-year enhancements for prior serious felony convictions (§ 667, subd. (a)). Pursuant to section 654, the court stayed a two-year sentence for false imprisonment, as well as all but one of the great bodily injury enhancements.

## **II. DISCUSSION**

### **A. Review of Sealed Materials**

In a portion of his opening brief that he filed under seal, Young argues the trial court violated his confrontation rights by excluding material he wished to use for impeachment purposes. We find no error.

The constitutional right of confrontation secures to a defendant the opportunity to cross-examine the witnesses against him. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 678 (*Van Arsdall*).) But the Confrontation Clause does not prevent trial courts from restricting the scope of cross-examination. (*Id.* at p. 679; accord, *People v. Williams* (1997) 16 Cal.4th 153, 207.) “[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” (*Van Arsdall, supra*, 475 U.S. at p. 679.) “‘[T]he Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.’” (*Ibid.*) A trial court’s decision to admit or exclude evidence offered for impeachment is reviewed for abuse of discretion. (*People v. Ledesma* (2006) 39 Cal.4th 641, 705.)

We have reviewed the materials sealed by the trial court pertaining to this issue (see *People v. Hobbs* (1994) 7 Cal.4th 948, 975), and we conclude no violation of Young’s confrontation rights occurred. The defense’s cross-examination of witnesses

was thorough and effective. The sealed material at issue was disclosed to the defense, and counsel was able to argue in favor of its use. The trial court carefully considered the issue and made thoughtful rulings, both when the matter first arose and later in ruling on Young's new trial motion.

**B. The Alleged Need for a Unanimity Instruction**

Young argues the court had a sua sponte obligation to give a unanimity instruction in connection with the burglary charge, because the evidence showed Young entered the house twice (i.e., once before the assault began, and later to retrieve Pryor's phone after she had been dragged outside). We disagree.

"In a criminal case, a jury verdict must be unanimous. [Citations.] . . . Additionally, the jury must agree unanimously the defendant is guilty of a *specific* crime. [Citation.] Therefore, cases have long held that when the evidence suggests more than one discrete crime, either the prosecution must elect among the crimes or the court must require the jury to agree on the same criminal act. [Citations.] [¶] This requirement of unanimity as to the criminal act 'is intended to eliminate the danger that the defendant will be convicted even though there is no single offense which all the jurors agree the defendant committed.' " (*People v. Russo* (2001) 25 Cal.4th 1124, 1132.) In the case of burglary, this rule applies when the evidence shows "two different entries with burglarious intent[.]" (*Id.* at pp. 1132–1133.)

During closing arguments, the prosecutor focused exclusively on Young's first entry into the house as the basis for the burglary charge. The prosecutor summarized the elements of burglary and stated he had to prove that Young entered the house with the intent to commit larceny or a felony. The prosecutor noted that it was undisputed Young entered the house and that therefore "[t]he only question is what was he thinking at the time?" The prosecutor then discussed evidence pertaining solely to Young's first entry into the house (including the fact he demanded to see Pryor and went straight upstairs) to support the view that Young entered "with the intent of shaking this woman out and

trying to get money back using physical force if necessary.”<sup>2</sup> The prosecutor did not argue Young’s second entry into the house (to get Pryor’s phone at her request) constituted burglary.

In his reply brief, Young concedes the prosecutor “elected to make [Young’s] initial entry into [Pryor’s] home the basis for the burglary[.]” As Young notes, the prosecutor based the separate *robbery* charge (of which Young was acquitted) on Young’s alleged taking of Pryor’s phone from her *after* he retrieved it from the house and gave it to her. Young argues on appeal that the jury could have inferred Young formed his intent to steal the phone before he reentered the house and retrieved it at Pryor’s request. But the prosecutor did not advance such a theory. And the prosecutor expressly treated the alleged forcible taking of the phone outside the house as separate from the earlier crimes. In summarizing the charges, the prosecutor stated three of them—burglary, assault with a deadly weapon, and kidnapping—were “overlapping.” The prosecutor then stated that Young, “the one who took the phone who is part of that skirmish who got the phone away from Binti Pryor when she was trying to make a phone call, he’s responsible for—or sorry, for *the robbery that was at the end.*” (Italics added.)

Since the prosecutor elected to make Young’s first entry into the house the basis for the burglary charge and did not argue the second entry constituted a burglary at all, the court did not err by failing to give a sua sponte unanimity instruction on this issue.

### **C. Section 654**

Young argues the court should have stayed the sentence on the assault charge pursuant to section 654’s prohibition on multiple punishments for the same act or indivisible course of conduct. We agree that, in the circumstances of this case, section 654 applied and prohibited punishment for both burglary and assault with a deadly weapon.

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<sup>2</sup> Similarly, Young’s trial counsel focused in her closing argument on Young’s first entry into the house, contending his intent when he entered was “to get the money back for the women, not to steal anything, not to assault her with a cane, . . . .”

Section 654, subdivision (a) provides in part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” “Section 654 prohibits punishment for two crimes arising from a single, indivisible course of conduct. [Citation.] Thus, if all of the crimes were merely incidental to or were the means of accomplishing or facilitating a single objective, the defendant may receive only one punishment. [Citation.] ‘The defendant’s intent and objective are factual questions for the trial court; [to permit multiple punishments,] there must be evidence to support a finding the defendant formed a separate intent and objective for each offense for which he was sentenced. [Citation.]’ [Citation.] When a trial court sentences a defendant to separate terms without making an express finding the defendant entertained separate objectives, the trial court is deemed to have made an implied finding each offense had a separate objective. [Citation.] ‘A trial court’s implied finding that a defendant harbored a separate intent and objective for each offense will be upheld on appeal if it is supported by substantial evidence.’ ”<sup>3</sup> (*People v. Islas* (2012) 210 Cal.App.4th 116, 129 (*Islas*)).

On the present record, there is no sufficient evidentiary basis for an implicit finding Young possessed independent criminal objectives when he burglarized Pryor’s home and assaulted Pryor.

“When a defendant is convicted of burglary and the intended felony underlying the burglary, section 654 prohibits punishment for both crimes.” (*Islas, supra*, 210 Cal.App.4th at p. 130; accord, *People v. Le* (2006) 136 Cal.App.4th 925, 930–931.) Here, the court instructed the jury that, to convict Young of burglary, the People had to prove (1) Young entered a building or a room within a building, and (2) when he did so,

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<sup>3</sup> Errors in the application of section 654 generally are not forfeited by failure to object in the trial court, because “a court acts in excess of its jurisdiction and imposes an unauthorized sentence when it fails to stay execution of a sentence under section 654.” (*People v. Hester* (2000) 22 Cal.4th 290, 295.)

he “intended to commit theft or assault with a deadly weapon or kidnapping.”<sup>4</sup> Noting that the jury was presented with alternative intended crimes underlying the burglary charge, the Attorney General argues the jury found (and the trial court implicitly found when it did not apply section 654) that Young entered the home with the intent to commit *theft*, and not with the intent to commit assault. Specifically, the Attorney General contends the jury and the court “found the burglary to be motivated by the desire to obtain money and the assault to be motivated by anger, revenge and a desire to do extensive physical harm.”

In our view, the record does not support this parsing of Young’s intent into separate desires to obtain money and to inflict physical injury (a characterization that was not advanced by either party at trial), and any implicit finding to this effect by the trial court is not supported by substantial evidence.<sup>5</sup> The prosecution’s theory at trial was that Young’s purpose in entering the house was a *combination* of these two desires, i.e., he intended to extract money from Pryor, using violence if necessary. As noted, the prosecutor argued in closing that Young entered the house “with the intent of shaking this woman out and trying to get money back using physical force if necessary.” Evidence supporting this theory included Pryor’s testimony that Young attacked her immediately upon reaching her room.

In contrast, the defense theory was that, when Young entered the house, he intended only to talk with Pryor about returning the money and had *neither* of the two illicit intents identified by the Attorney General on appeal, i.e., Young did not intend to steal money *or* to assault Pryor. Young’s testimony about his initial intent supported this theory.

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<sup>4</sup> Count one of the information alleged generally that Young entered the house “with the intent to commit larceny and a felony” (mirroring the language of the burglary statute, § 459, which refers to an entry “with intent to commit grand or petit larceny or any felony”). The verdict form completed by the jury states only that Young is guilty of burglary “as set forth in Count One of the Information.”

<sup>5</sup> Contrary to the Attorney General’s suggestion, the *jury* made no express findings as to Young’s having separate objectives in committing burglary and assault.



Neither party advanced (and the Attorney General has not identified any evidence supporting) a theory that, when Young entered Pryor's house, his intent was to *steal* money, but only by *nonviolent* means. He did not sneak into the house or start looking through drawers for money. He confronted Pryor, and (either immediately or very soon) the confrontation became violent. This also is not a case in which the defendant's assault occurred as part of an effort to escape or flee after committing a burglary, a scenario that may support a finding of a separate intent. (E.g., *People v. Wynn* (2010) 184 Cal.App.4th 1210, 1216.) On this record, we cannot conclude the burglary and assault convictions are based on separate criminal objectives. Instead, these offenses were incidental to or were the means of accomplishing or facilitating a single objective (see *Islas, supra*, 210 Cal.App.4th at p. 129), and section 654 prohibits punishing Young for both offenses.

#### **D. The Sentence**

The trial court imposed a prison term of 45 years to life, composed of (1) a determinate 20-year term, which in turn consisted of terms for Young's current counts of conviction and certain enhancements, and (2) an indeterminate term of 25 years to life. The court apparently based the indeterminate term on the three strikes law (and implicitly denied Young's *Romero* motion to strike his prior strikes),<sup>6</sup> but the court did not state it was imposing the indeterminate term for any particular current count of conviction.

The Attorney General contends that this sentence is unauthorized by the three strikes law, and that the court instead should have imposed indeterminate terms of 25 years to life for both the burglary and the assault convictions (although the court could direct that those terms be served concurrently). (Citing § 667, subds. (c)(6)–(7), (e)(2)(A)(ii).) We agree with the Attorney General that the three strikes law does not authorize the imposition of a “floating indeterminate term,” not attached to a current count of conviction, and “made consecutive to determinate sentencing” on the current counts of conviction. Instead, the three strikes law provides, in certain circumstances, for

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<sup>6</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

imposition of an indeterminate term as “the term *for the current felony conviction.*” (§§ 667, subd. (e)(2)(A) & 1170.12, subd. (c)(2)(A), italics added.)

We will vacate the sentence and remand for resentencing. If the court again declines to strike Young’s prior strikes for purposes of his eligibility for an indeterminate third-strike sentence on any current conviction, the court shall impose such a sentence but shall not also impose a determinate term for the same conviction. (See §§ 667, subd. (e)(2)(A) & 1170.12, subd. (c)(2)(A).) As discussed in part II.C above, after the court determines what terms to impose for the burglary and assault convictions (counts one and two), it shall stay the shorter term pursuant to section 654. (See *People v. Danowski* (1999) 74 Cal.App.4th 815, 823 [where the three strikes law does not mandate consecutive sentencing, section 654 applies to sentencing under the three strikes law].)

The parties have not briefed, and we do not address, any other issues pertaining to the court’s sentencing decisions or its calculation of the sentence it imposed. Except as stated above, we express no view as to the sentence the court should impose on remand.

### **III. DISPOSITION**

The convictions are affirmed. The sentence is vacated and the case is remanded for resentencing.

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Streeter, Acting P.J.

We concur:

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Reardon, J.

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Schulman, J.\*

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\* Judge of the Superior Court of California, City and County of San Francisco, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.